ground a judgment in the plaintiff's favor for the value of the articles was affirmed.

While, therefore, the stringent liability of an innkeeper, which the distinguished Chief Justice COLERIDGE has said does not "stand on mere reason, but on custom, growing out of a state of society no longer existing," is not to be applied to the owners of sleeping cars, it does not follow that they assume no duties or liabilities. These cars are in themselves an invitation to the travelling public to enter and protect themselves against the weariness of a long journey by disrobing and sleeping.

The passenger in buying and the company in selling the ticket contemplate that this privilege will be improved. The company accepting compensation under these circumstances impliedly undertakes to keep a reasonable watch over the passenger and his property. The faithful performance of this undertaking is the limit of its duty in this respect. Its breach must be the foundation of every action seeking to charge the company with the loss of articles the passenger has taken with him upon the car.

In the case at bar the defendant was held liable without regard to the faithfulness of its servants. If they exercised proper care by keeping a reasonable watch over the plaintiff's property, there was no breach of any undertaking on the part of the company, and hence no liability.

For this reason the judgment is reversed, and the cause remanded with directions to sustain the demurrer.

Circuit Court, Eastern District of Pennsylvania.

HATCH v. ADAMS.

A purchaser of patented articles from a territorial assignee of the patent, does not acquire the right to sell the articles in the course of trade outside the territory granted to his vendor.

FINAL HEARING.

This was a bill filed by O. L. Hatch, the owner of a patent for improvement in spring bed bottoms, and Elmer H. Grey & Co., to whom he had given an exclusive license in certain territory, against W. J. Adams, a dealer in bed bottoms, who was selling such patented improvement within said territory. The case was argued

upon the following facts, a statement of which was, by agreement, filed in lieu of an answer and proofs.

William B. Hatch was the inventor of an improvement in spring bed bottoms, the right to which was secured by re-issued letters patent No. 9576. By various assignments the title to said letters patent became vested in C. L. Stillman. On August 1st 1881, Stillman assigned to Mrs. Nellie C. Hedley, his right, title and interest in said invention for, to and in the state of New York. On June 28th 1882, Stillman assigned to the complainant, O. L. Hatch, all his right, title and interest in said letters patent. On September 5th 1883, Nellie C. Hedley granted to Francis A. Hall the exclusive license and right to make, use and sell said improvement within the following designated places, viz.: to manufacture in the city of New York or Brooklyn, and sell in the state of New York and elsewhere. On April 1st 1884, O. L. Hatch granted to Elmer H. Grey & Co., complainants, the exclusive right to make, sell and vend said improvement within the territory comprising the states of Pennsylvania, New Jersey, Delaware, Maryland, Virginia, West Virginia, North Carolina, South Carolina, Florida, Alabama, Mississippi, Louisiana, Georgia, Tennessee and the District of Columbia.

The respondent, W. J. Adams, was a dealer in bed bottoms in Philadelphia, and in the course of his business purchased from Francis A. Hall, in New York, bed bottoms containing the patented improvement. These bed bottoms Adams brought to Philadelphia, and sold in the course of his business to dealers in the latter city. To restrain such sales the present bill was filed.

Frank P. Prichard, for complainant.

Warren G. Griffith, for defendant.

The opinion of the court was delivered by

McKENNAN, CIR. J.—This case involves a single question, to wit: Has a purchaser of patented articles from a grantee of an exclusive right to manufacture and sell under the patent in a specified part of the United States, the right to sell the articles, in the course of trade, outside the designated limits covered by the grant to his vendor?

In the absence of authority to the contrary, we would feel constrained to answer this question in the negative. While the Patent

Act secures to an inventor the exclusive right to manufacture, use and sell his invention, it authorizes him to divide up his monopoly into territorial parcels, and so to grant to others an exclusive right under the patent to the whole or a specified part of the United States. Undoubtedly the grantee would take and hold the right conveyed subject to the limitations of the grant, and hence he could not lawfully exercise it outside of the territorial limits to which he was restricted. It would be illogical then to assume that he could confer upon a vendee a privilege with which he was not invested, and which he could not exercise himself.

It has been held, however, that an unrestricted sale of a patented article carries with it the right to its unlimited use. But the reason upon which this rule rests involves a plain distinction between the right to use and the right to manufacture and sell an invention, and is inapplicable to their definition. In *Adams* v. *Burke*, 17 Wall. 455, Mr. Justice MILLER thus explains the import and scope of the decisions on the subject: "We have repeatedly held that where a person had purchased a patented machine of the patentee or his assignee, this purchase carried with it the right to the use of that machine so long as it was capable of use, and that the expiration and renewal of the patent, whether in favor of the original patentee or his assignee, did not affect this right. The true ground on which these decisions rest is, that the sale by a person who has the full right to make, sell and use such a machine, carries with it the right to the use of that machine to the full extent to which it can be used in point of time." "The right to manufacture, the right to sell, and the right to use, are each substantive rights, and may be granted or conferred separately by the patentee."

"But in the essential nature of things, when the patentee, or the person having his rights, sells a machine or instrument whose sole value is in its use, he receives the consideration for its use, and he parts with the right to restrict that use. The article, in the language of the court, passes without the limit of the monopoly. That is to say, the patentee, or his assignee, having in the act of sale received all the royalty or consideration which he claims for the use of his invention in that particular machine or instrument, it is open to the use of the purchaser without further restriction on account of the monopoly of the patentee."

The only question in this case, as shown by the pleading,

involved the right of the purchaser of coffin lids, bought within a radius of ten miles from Boston, the right to make, sell and use which was restricted to that circle, to use them outside of it. The court sustained the right, saying: "That so far as the use of it was concerned, the patentee had received his consideration, and it was no longer within the monopoly of the patent. It would be to engraft a limitation upon the right of use not contemplated by the statute, nor within the reason of the contract, to say that it could only be used within the ten miles circle. Whatever, therefore, may be the rule where patentees sub-divide their patents, as to the exclusive right to make or sell, within a limited territory, we hold that, in the class of machines or implements which we have described, when they are once lawfully made and sold, there is no restriction upon their use to be implied for the benefit of the patentee or his assignees or licensees." Even with this careful limitation of the judgment of the court, Justices BRADLEY, SWAYNE and STRONG dissented, insisting that the locality of the use, as well as of the manufacture and sale, of the patented article was restricted by the grant, and that it ought accordingly to be enforced. It may be said then, that, while this case, with others which precede it, determine, for peculiar reasons, that the lawful sale of a patented article carries with it the right to the unrestricted use of such article as to time or locality, it is the fair import of them that no other "substantive right" conferred by the patent is thereby affected.

Our attention has been called to two cases decided by Circuit Courts, which demand a brief notice.

The first of these was *Adams* v. *Burke*, 4 Fisher 392. It was decided by Judge SHEPLEY, and his statement of the law is certainly broad enough to cover the right to sell, as well as the right to use, a patented article outside of a restricted locality. But only the latter right was involved in the case. What was said then by the learned judge touching the right to sell was clearly *obiter*, and when the case reached the Supreme Court (*Adams* v. *Burke*, 17 Wall. *supra*), that court expressly treated the right to manufacture and sell, and the right to use a patented article, as distinct substantive rights, and decided the law only as it related to the exercise of the latter right.

The remaining case, *McKay* v. *Wooster*, 2 Sawyer 373, was ruled upon the opinion of Judge SHEPLEY in *Adams* v. *Burke*,

evidently upon the hypothesis that an extra territorial sale of a patented article was a necessary subject of discussion.

But with this scrutiny of these cases, we are unembarrassed by the rule of comity which would lead us to conform our own judgment to that pronounced by the Circuit Courts elsewhere for the sake of uniformity of decision; and in view of the state of the law as it has been expounded by the Supreme Court, we feel authorized to express our own judgment, that a sale of patented articles, in the ordinary course of trade, outside the territorial limits to which the right to sell is restricted by the patentee's grant, is unwarranted.

There must, therefore, be a decree in favor of the complainant, with costs.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF GEORGIA.[2]
SUPREME COURT OF ILLINOIS.[3]
SUPREME JUDICIAL COURT OF MAINE.[4]
SUPREME COURT OF WISCONSIN.[5]

AGENCY.

General Agent—Authority—Usage of Trade—Contracts—What constitutes.—A general agent is one authorized to transact all the business of his principal, or all his business of some particular kind: *National Furnace Co.* v. *Keystone Mfg. Co.*, 110 Ill.

In the case of a general agent the law permits usage to enter into and enlarge the liability of the principal, in respect to contracts made by the agent; and it has been held that the usages of a particular trade or business are admissible for the purpose of interpreting the powers given to an agent or factor: *Id.*

A corporation engaged in the manufacture of pig iron, adopted, through its directory, a resolution, as follows: "Resolved, that A. B., of Chicago, be and is hereby appointed and employed by this company as its sole agent for the consignment and sale of its entire product, he to receive a commission," &c. This agent assumed to authorize another to make contracts in respect to the subject-matter of the agency, and

[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1884. The cases will probably appear in 112 U. S. Rep.

[2] From J. H. Lumpkin, Esq., Reporter; the cases will probably appear in 61 or 62 Ga. Rep.

[3] From Hon. N. L. Freeman, Reporter; to appear in 110 Ill. Rep.

[4] From J. W. Spaulding, Esq., Reporter; to appear in 76 Me. Rep.

[5] From Frederick K. Conover, Esq., Reporter; to appear in 61 Wis. Rep.